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OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Ms. Salas:

Enclosed please find an original, duplicate, and eleven copies of SBC Communications, Inc.'s ("SBC") Reply to Oppositions to and Comments in Support of Petitions for Reconsideration of the *Foreign Participation Order*, IB Docket No. 97-142. Please date-stamp and return the enclosed duplicate copy.

Please contact me with any questions. Thank you.

Sincerely,

Gina Harrison

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
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Rules and Policies on Foreign Participation
in the U.S. Telecommunications Market

IB Docket No. 97-142

**SBC REPLY
TO OPPOSITIONS TO AND COMMENTS IN SUPPORT OF
PETITIONS FOR RECONSIDERATION**

SBC Communications, Inc. ("SBC") respectfully replies to the oppositions to and comments in support of the petitions for reconsideration filed in the above-captioned proceeding.¹ In its Petition for Reconsideration,² SBC requested that the FCC: (1) clearly reflect in Sections 43.51(e) and 64.1001 of its Rules that all U.S. carriers may enter into "special concessions" with non-dominant foreign carriers and apply this policy on a non-discriminatory basis such that "grooming" conditions would not be imposed solely on Bell Operating Companies ("BOCs"); (2) reverse its claim that it may force existing and proposed private submarine cable operators to operate on a common carrier basis; and (3) eliminate the requirement that U.S. carriers seek regulatory review prior to acquiring a controlling interest in foreign carriers.

¹ *Foreign Participation in the U.S. Telecommunications Market*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, FCC 97-389 (Nov. 26, 1997) ("*Foreign Participation Order*" or "*Order*").

² *SBC Communications, Inc.*, Petition for Reconsideration, IB Docket No. 97-142 (Jan. 8, 1998) ("*SBC Petition for Reconsideration*").

SBC welcomes the comments of GTE Service Corporation ("GTE"),³ which fully support all three of its requests, and MCI Telecommunications Corporation ("MCI"),⁴ whose interpretation of the Commission's pre-notification rule supports SBC's interest in eliminating prior review of U.S. carrier foreign investments. SBC opposes, however, AT&T Corp.'s ("AT&T")⁵ misguided and unsupported views regarding the need for prior review.

In this Reply, SBC responds to AT&T's opposition and reaffirms that the Commission should eliminate its pre-notification requirement for U.S. carrier acquisitions of foreign carriers. SBC also invites the Commission to grant its first two unopposed requests.⁶ Finally, SBC reaffirms its support for BellSouth Corporation's ("BellSouth") request that the Commission apply the same public interest standard to foreign carrier entry and BOC entry into the long distance market.⁷

³ *GTE Service Corporation on Behalf of Its Affiliated Domestic and Foreign Telecommunications Carriers*, IB Docket Nos. 97-142 and 95-22, Comments of GTE Service Corporation on Petitions for Reconsideration (Feb. 10, 1998) ("*GTE Comments*").

⁴ *MCI Telecommunications Corporation*, IB Docket No. 97-142, Opposition to Petitions for Reconsideration (Feb. 10, 1998) ("*MCI Opposition*").

⁵ *AT&T Corp.*, IB Docket No. 97-142, AT&T Comments in Support of MCI Petition for Reconsideration and Opposition to Petitions of BellSouth, KDD and SBC (Feb. 10, 1998) ("*AT&T Comments and Opposition*").

⁶ Indeed, GTE agrees that the Commission lacks the authority to impose common carrier regulation on "providers that neither provide, nor intend to provide, service to the public at large." *GTE Comments* at 5.

⁷ *BellSouth Corporation*, Petition for Clarification and Reconsideration, IB Docket Nos. 97-142 and 95-22 (Jan. 8, 1998) ("*BellSouth Petition for Reconsideration*").

I. THE COMMISSION SHOULD NOT REQUIRE PRIOR REVIEW OF U.S. CARRIER FOREIGN ACQUISITIONS

SBC requested, in its Petition for Reconsideration, that the Commission delete its notification requirement for U.S. carriers' acquisitions of controlling interests in foreign carriers.⁸ GTE concurs that the FCC lacks the right to examine U.S. carriers' investments in foreign carriers, and both GTE and MCI agree that the FCC does not need to examine such investments.⁹ AT&T's contrary view, that prior review of such acquisitions is necessary, is erroneous because: (1) national treatment, the controlling principle of international law in this instance, does not mandate FCC review of foreign acquisitions by U.S. carriers; (2) U.S. competition policy does not warrant prior review given that Section 214 conditions adequately address concerns about U.S. carrier investments in foreign carriers; and (3) the notification process will chill U.S. carrier investment in foreign carrier privatizations that require "unconditional bids."

A. National Treatment Does Not Require Commission Review Of U.S. Carrier Foreign Acquisitions

Contrary to the agency's conclusion, international law does not compel any prior review requirements. SBC's Petition for Reconsideration demonstrated that national treatment, the controlling principle of international law in this instance, does not mandate FCC review of foreign acquisitions by U.S. carriers. GTE agrees that national treatment does not extend to scrutiny of "investments made in foreign countries, whether that investment comes from U.S. or other sources."¹⁰

⁸ *SBC Petition for Reconsideration* at 2-5.

⁹ *See GTE Comments* at 3-5; *MCI Opposition* at 5-6.

¹⁰ *GTE Comments* at 4.

AT&T's belief that national treatment requires the same treatment for "U.S. carrier investments in non-WTO countries" as "U.S. affiliates of all other WTO country carriers"¹¹ fundamentally misconstrues the requirements of the World Trade Organization's ("WTO") Basic Telecom Agreement. National treatment requires only that WTO-country carriers' investments in U.S. carriers be treated similarly to U.S. carriers' investments in U.S. carriers, *not* that similar treatment of investments in non-WTO and WTO countries must be provided. Moreover, the standards SBC is proposing would apply equally to foreign investments in WTO and non-WTO country carriers. Accordingly, AT&T has raised no national treatment argument that would require prior notification of U.S. carrier investments abroad.¹²

B. Section 214 Conditions Adequately Address Competitive Concerns

National competition policy does not warrant prior review of U.S. carriers' acquisitions of controlling interests in foreign carriers. Rather, Section 214 conditions adequately address anticompetitive concerns. Indeed, GTE's emphasis that competitive concerns are "better addressed through the section 214 approval process"¹³ is well-founded.

Further, MCI correctly suggests that FCC review should be limited to "foreign affiliations that warrant application of its new Section 214 rules,"¹⁴ and that the FCC should interpret its new rule as requiring only "*authorized* U.S. international carriers (*i.e.* carriers that have Section 214

¹¹ *AT&T Comments and Opposition* at 8.

¹² Moreover, AT&T's fear that removal of the notification requirement will impair the efficacy of the ECO test is unfounded. The ECO test is unrelated to the Commission's requirement that U.S. carriers provide notification prior to acquiring controlling interests in foreign carriers. Even if the Commission removes its notification requirement, the ECO test will still apply to authorizations for the provision of service to non-WTO member countries.

¹³ *GTE Comments* at 4.

¹⁴ *MCI Opposition* at 6.

authority) to notify the Commission of their acquisition.”¹⁵ Thus, SBC agrees with MCI’s conclusion that the FCC should not use pre-investment notifications to examine “the investment *per se*.”¹⁶ Rather, the Commission need only have and use such information after the transaction has been completed to monitor whether the new affiliation is raising competitive concerns.

Only AT&T opposes revising this rule, alleging that prior review is needed to guard against “abuse of market power.”¹⁷ But, U.S. carrier investment abroad does not, of itself, create competitive concerns. No competitive concern arises until U.S. carriers and their foreign affiliates become correspondents or provide services between themselves. As recognized by both GTE and MCI, these affiliations are already scrutinized and conditioned, if concerns arise, by the FCC through the Section 214 process. Accordingly, there is no need for the FCC to require notification and review of the mere investment of a U.S. carrier in foreign carriers.

C. The Commission’s Notification Process Will Seriously Hinder U.S. Carrier Participation In Foreign Privatizations

A notification process could chill U.S. carrier investment in foreign carrier privatizations that require “unconditional” bids.¹⁸ In response, AT&T provides only that the FCC has stated that it will “rarely, if ever,” prohibit U.S. carriers from acquiring 25% or greater interests in foreign carriers.¹⁹ AT&T offers no examples or reasoning to refute the specific threat identified by SBC: U.S. carrier investment in foreign carrier privatizations could be rejected in foreign

¹⁵ *Id.* (emphasis in original).

¹⁶ *Id.*

¹⁷ *AT&T Comments and Opposition* at 7.

¹⁸ *SBC Petition for Reconsideration* at 2.

¹⁹ *AT&T Comments and Opposition* at 7; *Foreign Participation Order*, ¶ 70.

countries well before the FCC review period expires. Indeed, SBC suspects that any bid from a U.S. company would be considered "conditioned" under the FCC's new rule and therefore would not be considered at all by a foreign country insisting on unconditional bids. To avoid competitive harm, the FCC should eliminate the notification requirement entirely.²⁰

II. CONCLUSION

For the foregoing reasons, SBC respectfully requests that the Commission reject AT&T's unfounded concerns and eliminate the prior review requirement for U.S. carriers seeking to acquire controlling interests in foreign carriers. In addition, because no party opposes SBC's request, the Commission should clearly reflect its new special concessions rule in Sections 43.51(e) and 64.1000 of the Rules and apply the policy non-discriminatorily to all U.S.

²⁰ Indeed, even AT&T recognizes the competitive harm this notification process imposes on U.S. carriers, and suggests that the Commission shorten the notification period from 60 to 30 days. *AT&T Comments and Opposition* at 7, n.7. Although a step in the right direction, shortening the notification period would not eliminate the likelihood that foreign countries will reject U.S. bids as "conditioned."

carriers, including BOCs. Similarly, the Commission should reverse its claim that it may force existing and proposed submarine cable providers to operate on a common carrier basis.

Respectfully submitted,

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February 20, 1998

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The undersigned hereby certifies that the preceding document was delivered by United States first class mail (except as otherwise indicated), postage prepaid, to the persons listed below.

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